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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ernesto L. Montoya - Temporary Quarters
Subsistence Expenses - Vacating Former Residence

File: B-228623

Date: January 4, 1988

DIGEST

A transferred employee claims entitlement to temporary quarters subsistence expense reimbursement for himself and his immediate family at his new station even though the family returned to their former residence 2 months later and remained there for a protracted time. The claim for temporary quarters for the family at the new duty station may be allowed. At issue is whether there is objective evidence of intent to vacate the former residence. We find that the requisite intent to vacate the former residence has been manifested since their former residence had been put up for sale, their household goods shipped and placed in storage at the new duty station, and the events which compelled their return did not arise until after they traveled to the new duty station. John L. Reid, B-227193, Oct. 16, 1987.

DECISION

This decision is in response to a request from the Chief, Financial Services Section, Mine Safety and Health Administration, U.S. Department of Labor. It concerns the entitlement of one of its employees to be reimbursed for temporary quarters subsistence expenses incident to a permanent change of station in March 1984. The claim may be allowed for the following reasons.

BACKGROUND

Mr. Ernesto Montoya, an employee of the Mine Safety and Health Administration, was involved in two permanent change-of-station transfers. The first transfer was from Rolla, Missouri, to Logan, West Virginia, in November 1982, and the second was from Logan, West Virginia, to Craig, Colorado, in March 1984.

Incident to the first transfer, Mr. Montoya was authorized the full range of relocation expenses for himself, his

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spouse, and his two dependent children. However, since they had just previously purchased a residence in Rolla, Missouri, the family decided not to accompany Mr. Montoya to Logan, West Virginia, at that time.

In March 1984, Mr. Montoya was transferred from Logan, West Virginia, to Craig, Colorado, with a reporting date of June 11, 1984. He again was authorized the full range of relocation expenses for himself, his spouse and two dependent children. On June 5, 1984, having put their Rolla, Missouri residence up for sale, Mrs. Montoya and their two children moved to Craig, Colorado, since it appeared that their residence was about to be sold. Their household goods were shipped to Craig, Colorado, at about that same time and placed in storage there.

It was later discovered when Mr. Montoya made claim for temporary quarters subsistence expenses that when Mrs. Montoya and their children traveled to Craig, Colorado, in June 1984, they stayed there for only 2 months and then returned to Rolla, Missouri. Mrs. Montoya and the children did not return to Craig until nearly 3 years later. In denying the claim for temporary quarters for Mrs. Montoya and the children, it was the agency's position that temporary quarters entitlement is based on having permanently vacated the residence at the old duty station. Therefore, the agency concluded that the family's trip to Craig in 1984 was simply a visit and they did not make their permanent move until 1987.

Mr. Montoya contends that his family's move in June 1984 was intended to be their permanent move. He asserts that this intention is supported by the fact that his residence was up for sale when his family moved and that they shipped all of their household goods to Craig. He claims that the only reason his family returned to Rolla in August 1984 was because their residence did not sell and the housing market in Rolla was such that there would be a protracted delay in finding other buyers. Since Mr. Montoya could not support his family's temporary living expenses in Craig and continue to meet his monthly mortgage payments on his residence in Rolla, it was decided that Mrs. Montoya and their two children would have to return to Rolla and remain there until the residence was sold.

RULING

Under the provisions of 5 U.S.C. § 5724a(a)(3) (Supp. I 1983) an agency is authorized to pay the subsistence expenses of the employee and his immediate family while occupying temporary quarters. Chapter 2, Part 5 of the Federal Travel Regulations (FTR) (Supp. 4, Aug. 23, 1982), incorp. by ref., 41 C.F.R. § 101-7.003 (1984), implements those provisions. Paragraph 2-5.2(c) of the FTR defines the term "temporary quarters" to mean any lodging obtained for the purpose of temporary occupancy by the employee and family after vacating the residence quarters occupied at the time the transfer was authorized.

While the term "vacate" is not defined in the FTR, we have generally considered a residence to have been vacated when the employee's family ceases to occupy it for the purposes intended. Charles C. Werner, B-185696, May 28, 1976; Erle B. Odekirk, B-187519, Jan. 26, 1977; and Luther S. Clemmer, B-199347, Feb. 18, 1981. In determining whether the family has ceased to occupy a residence at the former duty station or family domicile if away from that duty station, we examine the action taken by the employee and his family before and after departure from that residence. The focus of our inquiry, generally, has been to determine whether the employee and family, in light of all the facts and circumstances, has manifested by objective evidence an intent to vacate that residence. Mere statements of intent are not sufficient to establish entitlement to subsistence while occupying other quarters. Michael F. Locke, B-221751, July 11, 1986.

In George L. Daves, 65 Comp. Gen. 342 (1986), we considered the claim of an employee whose family joined him at his new duty station several months after he reported for duty. The family remained there for 26 days and then returned to their residence at the old duty station. Citing to our decision in John M. Mankat, B-195866, Apr. 2, 1980, we denied reimbursement in Daves for temporary quarters for the employee's family during that 26-day period. In so concluding, we stated that the issue was whether the residence at the former duty station had been disestablished. In Daves there was a lack of intent to disestablish the residence

because the residence at the old station remained fully furnished, was ready for occupancy, and had not been put up for sale or rent.

In contrast, we found the requisite intent to exist in John L. Reid, B-227193, Oct. 16, 1987. In Reid the employee and family traveled to the new duty station and occupied quarters there, but they returned and occupied their former residence on weekends. The employee asserted that the only purpose for the return travel was to prepare the house for sale, finish packing their household goods, and keep their insurance in effect until their household goods could be shipped. Reimbursement of temporary quarters was authorized in Reid based on the fact that nearly all of the household goods had been packed for shipment and the employee and his family were required to sleep on mattresses on the floor and eat their meals out during these weekend visits.

In the present situation, the employee's family returned to their former residence approximately 60 days after the transfer. However, we note that the family residence had been up for sale for quite some time before they traveled to Craig, Colorado, in June 1984, their household goods had been shipped to Craig, and by Mr. Montoya's undisputed estimate, 95 percent of all their household goods were in storage in Craig, much of which remained there even after Mrs. Montoya and their children returned to Rolla, Missouri. In view of the reason for their return to Rolla, i.e., the inability to fund both their monthly mortgage payments pending sale of the house and family living expenses in Craig, it is our view that the family's presence in Craig was for the purpose of a permanent move, not merely a visit. Therefore, Mr. Montoya's temporary quarters subsistence claim for his wife and his children may be allowed for this 2-month period.

We note that Mr. Montoya's initial period of temporary quarters (30 days) was extended for an additional 60 days. While he and his family may be reimbursed for temporary quarters subsistence expenses during the period June 5, 1984, to August 18, 1984, his family's return to Rolla would not terminate Mr. Montoya's individual temporary quarters subsistence entitlement. If it is established that such quarters he occupied in Craig following return of his family

did not become his permanent quarters, a temporary quarters claim may be allowed him on an individual basis after August 18, 1984, not to exceed September 3, 1984, the 90th day after temporary quarters occupancy was begun in Craig, Colorado. See Johnny M. Jones, 63 Comp. Gen. 53 (1984), affirmed on reconsideration, B-215228, Apr. 12, 1985.

for 
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